



May 2023

NASF will Host the EPA at SUR/FIN in Cleveland to Discuss the Latest on the Surface Finishing PFAS Rule:

Join Us Tuesday, June 6, 2023 in Cleveland @ [NASF SUR/FIN 2023](#)

Among the U.S. Environmental Protection Agency's major actions impacting the finishing industry this year is its PFAS effluent guidelines rulemaking for metal finishing and electroplating. While it's still early in the process, NASF continues to work closely with agency officials on a number of member concerns and challenges associated with the proposed rule package slated for December 2024.

[Join us at SUR/FIN for an NASF Government Affairs update](#) on Tuesday afternoon, June 6, which will include EPA's overview of the latest developments on the PFAS industry survey and outlook for the proposed rulemaking.

NASF Communicating with White House on EPA's Revised Survey for PFAS Wastewater Discharge Rule

NASF filed comments earlier this year on EPA's draft PFAS industry survey that will inform the agency's proposed limits on PFAS wastewater discharge limits slated for December 2024. While the survey's scope is in line with typical industry surveys issued under the Clean Water Act, the association argued nonetheless the survey is unnecessarily burdensome for small operations in particular and requested that EPA streamline the survey.

In response, EPA has revised the survey in April 2023 and requested comments on the revised survey. The revised survey is currently being reviewed by the White House and NASF is in the process of scheduling a meeting with OMB to discuss the revised survey.

In its May 22, 2023 comments, NASF noted that EPA did clarify and streamline some of the questions in the survey, eliminated some questions, and added a few more questions. The revisions,

however, will not reduce the burden that surface finishing facilities will face in completing the survey.

Despite making only modest changes to the survey, the agency has estimated that the time and cost burden associated with the survey will be reduced by over 50 percent. Specifically, EPA indicated that it planned to send the survey to over 200 more facilities, yet the total industrywide burden-hours associated with the survey was reduced from over 35 thousand burden hours to around 15 thousand hours. This would be a reduced estimate from 19 hours to seven hours for each facility to complete the survey. In addition, EPA's cost associated with the survey were seven times lower than the costs provided by NASF.

NASF has requested that EPA makes additional changes to the survey to minimize the impacts of the survey. EPA is expecting to final the survey soon and plans to send it to surface finishing facilities this summer. When the survey has been sent out, NASF will hold an educational webinar for members to provide guidance for completing the survey.

NASF will continue working with EPA and White House officials to minimize the impacts of this survey on the surface finishing industry. If you have any questions or would like additional information on the survey or the new wastewater discharge rule for PFAS, please contact Jeff Hannapel or Christian Richter with NASF at jhannapel@thepolicygoup.com or cichter@thepolicygroup.com.

Senate Legislation Introduced to Exempt Certain Entities from Liability for PFAS Contamination under Superfund

As many members are aware, EPA is now advancing on its proposal to list PFOA and PFOS as hazardous substances under the federal Superfund hazardous waste cleanup law and is also considering listing additional PFAS as hazardous substances. With the broad strict, joint, and several liability under Superfund, if these rules are finalized it would subject any entity linked with PFAS contamination to expensive potential cleanups and remediation liability from EPA and private third parties.

Concerned by the prospect that parties not "responsible" for PFAS contamination could be subject to the broad net of Superfund liability, U.S. Senator Cynthia Lummis (R-WY) has introduced several bills to exempt from CERCLA liability entities who claim they did not contribute to PFAS contamination, including farms and ranches, airports, landfills, facilities with certain fire suppression systems, water treatment plants, and drinking water providers.

The recently introduced bills are available at: Agriculture: <https://www.lummis.senate.gov/wp-content/uploads/KAT23420-Agriculture.pdf>; Airports: <https://www.lummis.senate.gov/wp-content/uploads/KAT23418-Airports.pdf>; Fire Suppression: <https://www.lummis.senate.gov/wp->

[content/uploads/KAT23421-Fire-Suppression.pdf](https://www.lummis.senate.gov/wp-content/uploads/KAT23421-Fire-Suppression.pdf); Waste: <https://www.lummis.senate.gov/wp-content/uploads/KAT23419-Resource-Management.pdf>; and Water: <https://www.lummis.senate.gov/wp-content/uploads/KAT23417-Water-Systems.pdf>.

Supporters of the proposed bills indicate that the legislation is needed to protect businesses and public works agencies that did nothing to contribute to PFAS contamination from unnecessary lawsuits that could ultimately harm consumers. Opponents of the Superfund liability exemption legislation argue that the law is not the appropriate legal vehicle for addressing PFAS contamination because of the overly broad liability net and the many unintended consequences of subjecting parties to expensive cleanup and remediation costs.

The exemptions would also leave those remaining entities subject to Superfund liability to an even greater relative share of expenses for possible Superfund cleanup and remediation. In addition, a wider range of industries also have arguments for an exemption from Superfund liability. For example, NASF has noted that the use of PFAS-based fume suppressants in surface finishing operations to reduce hexavalent chromium emissions was recommended by EPA in the original chromium air toxics rulemaking in the 1990s.

Seven other Republican senators co-sponsored the bills, but passage of the legislation will face many obstacles and challenges with Democrats in control of the Senate.

NASF will continue to work with industry partners and members of Congress to find legislative solutions that appropriately address Superfund liability. If you have any questions or would like additional information on this issue, please contact Jeff Hannapel with NASF at jhannapel@thepolicygoup.com.

California Environmental Advocacy Group Files Novel Prop 65 Legal Action Against Surface Finishing Facilities for PFAS Discharges

An environmental, nonprofit organization, The Center for Environmental Health (CEH), recently filed novel 60-day legal notices against two California surface finishing facilities under Proposition 65, California Safe Drinking Water and Toxic Enforcement Act of 1986 (Prop 65).

The notices claimed that, based on CEH's investigations, the facilities discharged perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) in groundwater below the facilities at levels that are over 100 times higher than EPA's new proposed drinking water standard of 4 parts per trillion (ppt).

CEH claims that the discharges from the facilities are due to historic uses of PFOS-based fume suppressants that were used to reduce hexavalent chromium air emissions consistent with EPA's chromium electroplating and anodizing National Emissions Standard for Hazardous Air Pollutants

(NESHAP). The use of PFOS-based fume suppressants in surface finishing operations was phased out in September 2015 by the federal NESHAP.

Legal actions under Prop 65 are typically used to enforce warning and labeling requirements of the law. The legal notices represent a novel use of the uncommonly used “discharge” provision under Prop 65. Under Prop 65, facilities cannot discharge hazardous chemicals known to the state to cause cancer or reproductive harm, including PFOA and PFOS, into sources of drinking water.

The California Attorney General will have the option of joining CEH in the legal action by taking the lead in litigation against the facilities. Prop 65 penalties can be as high as \$2,500 per violation per day, and companies may also have to pay the plaintiff’s attorney fees and costs.

CEH is requesting that the facilities eliminate the source of the PFOA and PFOS discharges and cleanup the property around the facilities. Identifying and eliminating the sources of releases can be difficult, particularly for facilities that have not used PFOS-based fume suppressants since September 2015 or before. Because these cases are so expensive to litigate and prove damages, the legal actions are often resolved with settlement agreements among the parties. Such troubling trends are expected to increase as more federal and state regulations are promulgated to address the presence of PFAS in the environment.

Minneapolis Plans to Ban New Heavy Industry in Impacted Neighborhoods

In an effort to reduce the impacts from industry and to promote environmental justice, the City of Minneapolis is planning to ban new facilities in several sectors, including metal plating facilities, foundries, chemical manufacturing plants, and commercial laundries. The ban would not include existing “heavy industry” facilities, many of which are located in low-income minority neighborhoods, because state law prohibits the city from forcing them out. Environmental advocates proposed a prohibition on the expansion of existing facilities that would increase emissions, but the city has not adopted this prohibition.

Community groups from minority neighborhoods next to heavy industry have also asked the city to do more to reduce the impact of pollution on their communities. While the city does have limited available tools to restrict industrial activities and facility permits issued by the state, it plans to conduct a “cumulative industrial impact” analysis on the health of residents in neighborhoods determined to be disproportionately exposed to nearby industrial facilities. These and other environmental justice initiatives will continue to pose significant challenges for manufacturing in a growing number of areas nationwide.

EPA Proposes New GHG Emissions Standards for Power Plants

On May 11, 2023 EPA announced comprehensive proposed greenhouse gas (GHG) standards for power plants to drastically reduce GHG emissions based on the use of carbon capture and storage (CCS) and hydrogen co-firing technologies. EPA estimates that the new standards could eliminate up to one billion metric tons of carbon emissions by 2042.

The proposed standards vary significantly depending on whether power plants are new or existing, whether they are fueled by coal or natural gas, how frequently they operate, and whether they are scheduled to retire in the short term. For example, coal-fired power plants that have committed to retiring before 2040 would not have to install CCS technology to control GHG emissions.

According to EPA, the proposal is based on more traditional authorities to regulate GHG emissions under the Clean Air Act (CAA). Specifically, EPA states that the standards are based on proven and cost-effective technologies that can be installed at power plants and reduce GHG emissions significantly. EPA has identified CCS and hydrogen co-firing as the “best system of emission reduction” (BSER). In addition, EPA claims that the draft rule provides flexible options to meet the standards, allows time needed to plan and invest for compliance, and supports a reliable source of affordable energy.

Once EPA finalizes the rule, states will have 24 months to develop implementation plans with specific emission standards for power plants to meet EPA’s emissions guidelines. Under these state plans, power plants will have until 2030, 2032, or 2035 to comply. Environmental advocacy groups have been critical of the extended compliance timeframe.

Some of the biggest issues to resolve will center on compliance costs and potential energy consumer price increases. EPA asserts that the price increases will be negligible, and that the tax incentives in place from last year’s passage of the Inflation Reduction Act will ensure that the installation of CCS and hydrogen co-firing technologies could pay for themselves.

Industry sources disagree, arguing that the CCS and hydrogen co-firing technologies that EPA identified as BSER have not been adequately demonstrated and are not cost effective as required by the CAA. In addition, the new standards could put an additional strain on the nation’s already burdened energy grid. This could increase energy prices significantly and disrupt energy supply chains.

The proposed rule has not yet been published in the Federal Register, but there will be a 60-day comment period. Given the significance of this rule and EPA’s controversial history in trying to regulate GHG emissions from power plants, legal challenges to the final rule are likely. NASF will continue to work with stakeholders and EPA to minimize the potential impact of this rule on surface finishing operations. If you have any questions or would like additional information on this new rule,

please contact Jeff Hannapel or Christian Richter with NASF at jhannapel@thepolicygoup.com or cichter@thepolicygroup.com.